**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

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| DEBRA RAFANO, individually and on behalf of all others similarly situated,<br><br>Plaintiff,<br><br>v.<br><br>GOHEALTH, LLC, a Delaware limited liability company.<br><br>Defendant. | Case No. 16-cv-10272<br><br>**CLASS ACTION COMPLAINT**<br><br>**JURY TRIAL DEMANDED** |

## CLASS ACTION COMPLAINT

Plaintiff Debra Rafano ("Rafano" or "Plaintiff") brings this Class Action Complaint and Demand for Jury Trial ("Complaint") against Defendant GoHealth, LLC ("Defendant" or "GoHealth") to: (1) stop its practice of placing calls using an automatic telephone dialing system ("ATDS") and/or using an artificial or prerecorded voice to the cellular telephones of consumers nationwide without their prior express consent, (2) enjoin Defendant from continuing to place pre-recorded telephone calls to consumers who did not provide their prior written express consent to receive them, and (3) obtain redress for all persons injured by its conduct. Plaintiff, for her Complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

## PARTIES

1. Plaintiff Rafano is a natural person and resident of the State of Texas. Plaintiff resides in West Columbia, Texas.

2. Defendant GoHealth, LLC is a limited liability company incorporated and existing under the laws of the State of Delaware. Its principal office address is 214 West Huron Street, Chicago, Illinois 60654. GoHealth does business throughout the United States, including in the State of Illinois and in this District.

**JURISDICTION & VENUE**

3. This Court has federal subject matter jurisdiction under 28 U.S.C. §1331 as the action arises under the Telephone Consumer Protection Act, 47 U.S.C § 227, *et seq*., which is a Federal statute.

4. The Court has personal jurisdiction over Defendant and venue is proper in this District because Defendant is registered to do business in the State of Illinois, is headquartered in this District, and regularly conducts business in the State of Illinois and in this District.

5. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant resides in this District, conducts a significant amount of business within this District and markets to this District, and because the wrongful conduct giving rise to this case occurred in, was directed to, and/or emanated from this District.

**COMMON ALLEGATIONS OF FACT**

6. Defendant GoHealth purports to be a broker for consumers seeking health insurance. In reality, GoHealth is a lead generation business that obtains and sells consumer leads to brokers and agents.

7. GoHealth offers services to brokers and agents through a product known as the "GoHealth Virtual Marketing Organization." Defendant refers to this as the GoHealth VMO.[1]

8. The GoHealth VMO includes an ATDS known as "BrokerDialer." Defendant

[1] https://www.gohealthvmo.com/

describes BrokerDialer as "our automatic dialer tool that calls prospects and quality leads."[2]

9. Defendant, through BrokerDialer or other technology, makes and places pre-recorded calls. As noted by Defendant:

> Contact more prospects in less time with this automatic dialer tool, allowing you to save time and increase efficiency while trying to connect with leads! BrokerDialer provides faster messaging, leaving your preferred pre-recorded message upon reaching a prospect's voicemail.[3]

10. Defendant calls consumers on their cellular telephones using an "automatic telephone dialing system" ("ATDS") without their prior written express consent in violation of the TCPA.

11. GoHealth fails to obtain any prior express written consent to make the pre-recorded calls described herein to cellular telephone numbers.

12. Consumer complaints about GoHealth's invasive and repetitive calls are legion. As a sample, consumers have complained as follows:

- "This number has been calling my cell number at least 10 times per day, 7 days a week, for the last two weeks!!!"[4]
- "calls all day and hangs up every time"[5]
- "Sick of this! Calls, won't say anything when we answer."[6]
- "They call every day! Company called Individual Health Quotes."[7]
- "they call my phone number at least 4 times a day without leaving a message. I called the number back and told them to remove my number from their call list in which the lady replied "I'm sorry I can't do that" and then hung up on

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[2] https://www.gohealthvmo.com/agent-benefits/technology/broker-dialer/
[3] https://www.gohealthvmo.com/agent-benefits/technology/
[4] http://800notes.com/Phone.aspx/1-281-746-3392
[5] *Id.*
[6] *Id.*
[7] http://800notes.com/Phone.aspx/1-515-509-2555. Defendant uses the name Individual Health quotes and the website www.individualhealthquotes.com is registered to Norvax, the prior name for GoHealth.

me."[8]

13. In placing the calls that form the basis of this Complaint, Defendant GoHealth, or its affiliated entities, utilized an ATDS in violation of the TCPA. Specifically, the hardware and software used by GoHealth has the capacity to generate and store random numbers, and/or receive and store lists of telephone numbers, and to dial such numbers, *en masse*, in an automated fashion without human intervention. GoHealth's automated dialing equipment also is, or includes features substantially similar to, a predictive dialer, meaning that it is capable of making numerous phone calls simultaneously and automatically connecting answered calls to then available callers and disconnecting the rest (all without human intervention).

14. Telemarketers who wish to avoid calling numbers listed on the National Do Not Call Registry can easily and inexpensively do so by "scrubbing" their call lists against the National Do Not Call Registry database. The scrubbing process identifies those numbers on the National Do Not Call Registry, allowing telemarketers to remove those numbers and ensure that no calls are placed to consumers who opt-out of telemarketing calls.

15. To avoid violating the TCPA by calling registered numbers, telemarketers must scrub their call lists against the Registry at least once every thirty-one days. *See* 16 C.F.R. § 310.4(b)(3)(iv).

16. There are numerous third party services that will additionally scrub call lists for a telemarketer to segment out landline and cellular telephone numbers, since the consent standards differ depending on what type of phone a telemarketer is calling.[9] Indeed, one such service notes

[8] http://www.bbb.org/chicago/business-reviews/home-health-services/individual-health-quotes-in-chicago-il-88703412/complaints

[9] *See, e.g.*, http://www.dncsolution.com/do-not-call.asp; http://www.donotcallprotection.com/do-not-call-compliance-solutions-1; http://www.mindwav.com/tcpa_compliance_solution.asp.

that it can:

> Instantly verify whether a specific phone number is wireless or wireline to learn if TCPA regulations apply – and verify the identity of the current subscriber to determine if they are the same party who provided you with consent.[10]

17. When placing its calls to consumers, Defendant failed to get the prior express consent required by the TCPA of cellular telephone owners/users as required by the TCPA to make such calls.

18. Furthermore, Defendant calls consumers who have no “established business relationship” with Defendant, and Defendant failed to scrub its lists to ensure that it was not placing calls to person’s whose numbers were registered on the Do Not Call Registry. As a result, it called persons whose numbers were registered on the Do Not Call Registry.

19. Finally, even when consumers try to opt out of future calls by requesting to never be called again, Defendant continues to call them.

20. Defendant knowingly made (and continues to make) telemarketing calls to cellular telephones without the prior express consent of the call recipients. As such, Defendant not only invaded the personal privacy of Plaintiff and other members of the putative Classes but also intentionally and repeatedly violated the TCPA.

**FACTS SPECIFIC TO PLAINTIFF DEBRA RAFANO**

21. On February 21, 2014, Plaintiff registered her cellular telephone number on the National Do Not Call Registry to avoid receiving unsolicited telemarketing calls on her cellular telephone.

22. More than 30 days after Plaintiff registered her cellular telephone number on the National Do Not Call Registry, GoHealth, either directly, or through its affiliates and agents,

[10] https://www.neustar.biz/services/tcpa-compliance

made a series of unsolicited telemarketing calls to Plaintiff. The calls came to Plaintiff on her cellular telephone using an artificial or pre-recorded voice. The calls began on November 16, 2015.

23. All of the pre-recorded telephone calls from GoHealth were made to solicit Plaintiff to obtain quotes for health insurance.

24. On November 16, 2015, Plaintiff received a pre-recorded telephone call from GoHealth on her cellular telephone from the number 423-381-6190. The November 16, 2015 call began with a pre-recorded message asking Plaintiff to hold for an agent and then provided an option for her to be added to Defendant's internal do not call list. Plaintiff chose to wait for agent to confirm what the call was about. When the agent indicated that the call was regarding health insurance, Plaintiff made it clear that she was not seeking health insurance, and she asked the agent not to call her again.

25. During January 2016, more than 30 days after asking Defendant not to call her again, Plaintiff received and answered at least two additional calls from Defendant. She also listened to at least three additional pre-recorded telephone messages from GoHealth on her cellular telephone (again from 423-381-6190) that GoHealth had left on her phone as voicemails.

26. For some of these pre-recorded telephone calls in January 2016, Plaintiff would wait for an agent and again ask Defendant to stop calling her. For others, Plaintiff would press the number indicated in the pre-recorded message to supposedly remove her from Defendant's call list. Despite both methods of opting out, Plaintiff continued to receive pre-recorded calls on her cellular phone from GoHealth.

27. Plaintiff Rafano never consented either orally or in writing to receive pre-recorded calls placed to her cellular telephone from Defendant GoHealth.

28. At no time did Plaintiff consent to the receipt of pre-recorded calls to her cellular telephone from GoHealth let alone provide prior oral or written express consent to GoHealth for such calls to be placed.

29. By making unauthorized pre-recorded telephone calls as alleged herein, GoHealth has caused consumers actual harm. In the present case, a consumer could be subjected to multiple, repeating unsolicited pre-recorded calls because GoHealth's opt out mechanism does not work. Defendant caused Plaintiff and the members of the Class actual harm and cognizable legal injury. This includes the aggravation and nuisance and invasions of privacy that result from the receipt of such calls and a loss of value realized for the monies consumers paid to their wireless carriers for the receipt of such calls. Furthermore, the calls interfered with Plaintiff's and the other Class members' use and enjoyment of their cellphones, including the related data, software, and hardware components. Defendants also caused substantial injury to their phones by causing wear and tear on their property, consuming battery life, and in certain caes appropriating cellular minutes, in addition to the invasion of privacy and nuisance of having to answer such unsolicited calls.

30. To redress these injuries, Plaintiff, on behalf of herself and the Classes of similarly situated individuals alleged in this Complaint, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited autodialed calls to cellular telephones.

31. On behalf of the Classes, Plaintiff also seeks an injunction requiring GoHealth to cease all unsolicited and unauthorized pre-recorded calling activities and an award of statutory damages to the class members, together with costs and reasonable attorneys' fees to be paid from a common fund established for the benefit of the Classes.

## CLASS ACTION ALLEGATIONS

32. Plaintiff Rafano brings this action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of herself and the four classes defined as follows:

> **Pre-recorded No Consent Class**: All persons in the United States who (1) GoHealth (or a third person acting on behalf of GoHealth) called, (2) on the person's cellular telephone, (3) for the purpose of selling Defendant's products and services, (4) using a pre-recorded voice, and (5) for whom Defendant claims it obtained prior express consent in the same manner as Defendant claims it supposedly obtained prior express consent to call the Plaintiff.
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> **Pre-recorded Stop Class**: All persons in the United States who (1) GoHealth (or a third person acting on behalf of GoHealth) called, (2) on the person's cellular telephone, (3) for the purpose of selling Defendant's products and services, (4) using a pre-recorded voice, (4) after the person informed GoHealth that s/he no longer wished to receive calls from GoHealth.
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> **Do Not Call Registry Class**: All persons in the United States who (1) GoHealth (or a third person acting on behalf of GoHealth) called more than one time on his/her cellular telephone; (2) within any 12-month period (3) where the cellular telephone number had been listed on the National Do Not Call Registry for at least thirty days; (4) for the purpose of selling Defendant's products and services; and (5) for whom Defendant claims it obtained prior express consent in the same manner as Defendant claims it obtained prior express consent to call the Plaintiff.
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> **Do Not Call Registry Stop Class**: All individuals in the United States (1) who had his/her telephone number(s) registered with the National Do Not Call Registry for at least thirty days; (2) who received more than one telephone call made by or on behalf of GoHealth within a 12-month period; (3) who requested that Defendant not call them again; and (4) who received another call from Defendant after the person informed GoHealth that s/he no longer wished to receive calls from GoHealth at least 30 days after requesting to no longer be called.

33. The following people are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and its current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5)

Plaintiffs' counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons. Plaintiff anticipates needing to amend the class definitions following reasonable and appropriate class discovery.

34. On information and belief, there are hundreds, if not thousands, of members of the Classes such that joinder of all members is impracticable.

35. There are several questions of law and fact common to the claims of Plaintiff and the other members of the Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Class members that may be answered in a single stroke include but are not limited to the following:

a. whether Defendant's conduct constitutes a violation of the TCPA;

b. whether Defendant utilized an automatic telephone dialing system or pre-recorded voice to place pre-recorded calls to members of the Classes;

c. whether members of the Classes are entitled to treble damages based on the willfulness of Defendant's conduct;

d. whether Defendant obtained prior express written consent to contact any class members on their cellular telephones;

e. whether Defendant systematically made multiple telephone calls to consumers whose telephone numbers were registered with the National Do Not Call Registry and whether calls were made to such persons after they requested to no longer be called;

f. whether Plaintiff and the members of the Do Not Call Class are entitled to treble damages based on the willfulness of Defendant's conduct.

36. The factual and legal bases of Defendant's liability to Plaintiff and to the other

members of the Classes are the same, resulting in injury to the Plaintiff and to all of the other members of the Classes, including the annoyance and aggravation associated with such pre-recorded calls as well as the loss of cellular plan minutes and temporary inability to enjoy and use their cellphones, as a result of the transmission of the pre-recorded calls alleged herein. Plaintiff and the other members of the Classes have all suffered harm and damages as a result of Defendant's unlawful and wrongful conduct of placing pre-recorded calls. Plaintiff's claims are typical of the claims of the members of the Classes as all members of the Classes are similarly affected by Defendant's wrongful conduct. Plaintiff, like other members of the Classes, received unsolicited pre-recorded calls from Defendant. Plaintiff is advancing the same claims and legal theory on behalf of herself and all absent members of the Classes.

37. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Classes. Plaintiff's claims are made in a representative capacity on behalf of the other members of the Classes. Plaintiff has no interest antagonistic to the interests of the other members of the proposed Classes and is subject to no unique defenses. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiff nor her counsel has any interest adverse to those of the other members of the Classes.

38. The suit may be maintained as a class action under Federal Rule of Civil Procedure 23(b)(2) because Defendant has acted, and/or has refused to act, on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief. Specifically, injunctive relief is necessary and appropriate to require Defendant to discontinue placing unsolicited and unauthorized pre-recorded calls to the public. Likewise, Defendant has acted and

fails to act on grounds generally applicable to the Plaintiff and the other members of the Classes in placing the pre-recorded calls at issue, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes.

39. In addition, this suit may be maintained as a class action under Federal Rule of Civil Procedure 23(b)(3) because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Absent a class action, most members of the Classes would find the cost of litigating their claims to be prohibitive, and will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication. The claims asserted herein are applicable to all consumers throughout the United States who received an unsolicited and unauthorized pre-recorded call from Defendant. The injury suffered by each individual class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Classes individually to redress effectively the wrongs done to them. Even if the members of the Classes could afford such litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

40. Adequate notice can be given to the members of the Classes directly using information maintained in Defendant's records or through notice by publication.

**FIRST CAUSE OF ACTION**

**Telephone Consumer Protection Act**
**(Violation of 47 U.S.C. § 227, *et seq.*)**
**(On Behalf of Plaintiff and the Pre-Recorded No Consent Class)**

41. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

42. Defendant made unsolicited and unwanted telemarketing calls to telephone numbers belonging to Plaintiff and the other members of the Pre-recorded No Consent Class on their cellular telephones in an effort to sell its products and services using a pre-recorded voice as defined in the TCPA.

43. Defendant made the telephone calls using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and/or receive and store lists of phone numbers, and to dial such numbers, *en masse*.

44. Defendant utilized equipment that made the telephone calls to Plaintiff and other members of the Pre-recorded No Consent Class simultaneously and without human intervention.

45. Defendant failed to obtain any prior express written consent from Plaintiff and other called parties that included, as required by 47 C.F.R. § 64.1200(f)(8)(i) a "clear and conspicuous" disclosure informing the person signing that:

> (A) By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and
>
> (B) The person is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

46. Any consent that was supposedly obtained required Plaintiff and the class members to receive autodialed and pre-recorded calls.

47. Defendant also failed to obtain any prior express oral consent of the persons receiving its pre-recorded telephone calls.

48. By making unsolicited telephone calls to Plaintiff and members of the Pre-recorded No Consent Class's cellular telephones using a pre-recorded voice, GoHealth violated 47 U.S.C. § 227(b)(1)(B) by doing so without prior express consent as required.

49. As a result of Defendant's unlawful conduct, Plaintiff and the members of the Pre-recorded No Consent Class suffered actual damages in the form of monies paid to receive the unsolicited telephone calls on their cellular phones and, under Section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of $500 in damages for each such violation of the TCPA.

50. Should the Court determine that Defendant's conduct was willful and knowing, the Court may, pursuant to Section 227(b)(3), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Pre-recorded No Consent Class.

**SECOND CAUSE OF ACTION**
**Telephone Consumer Protection Act**
**(Violation of 47 U.S.C. § 227, *et seq.*)**
**(On Behalf of Plaintiff and the Pre-Recorded Stop Class)**

51. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

52. Defendant made unsolicited and unwanted pre-recorded calls to telephone numbers belonging to Plaintiff and the other members of the Pre-recorded Stop Class on their cellular telephones after they had informed Defendant, orally and/or through the Defendant's automated prompt system, that they no longer wished to receive such calls from Defendant.

53. Defendant made the telephone calls using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and/or receive and store lists of phone numbers, and to dial such numbers, *en masse*.

54. Defendant utilized equipment that made the telephone calls to Plaintiff and other members of the Pre-recorded Stop Class simultaneously and without human intervention.

55. By making unsolicited telephone calls to Plaintiff and other members of the Pre-recorded Stop Class's cellular telephones using a pre-recorded voice after they requested to no longer receive such calls, GoHealth violated 47 U.S.C. § 227(b)(1)(B) by doing so without prior express consent.

56. As a result of Defendant's unlawful conduct, Plaintiff and the members of the Pre-recorded Stop Class suffered actual damages in the form of monies paid to receive the unsolicited telephone calls on their cellular phones and, under Section 227(b)(3)(B), are each entitled to, inter alia, a minimum of $500 in damages for each such violation of the TCPA.

57. Should the Court determine that Defendant's conduct was willful and knowing, the Court may, pursuant to Section 227(b)(3), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Pre-recorded Stop Class.

**THIRD CAUSE OF ACTION**
**Telephone Consumer Protection Act**
**(Violation of 47 U.S.C. § 227, *et seq.*)**
**(On Behalf of Plaintiff and the Do Not Call Registry Class)**

58. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

59. 47 U.S.C. § 227(c) provides that any "person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may" bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object.

60. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons

who do not wish to receive telephone solicitations that is maintained by the federal government."

61. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) "are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the FCC's July 3, 2003 Report and Order, which in turn, provides as follows:

> The Commission's rules provide that companies making telephone solicitations to residential telephone subscribers must comply with time of day restrictions and must institute procedures for maintaining do-not-call lists. For the reasons described above, we conclude that these rules apply to calls made to wireless telephone numbers. We believe that wireless subscribers should be afforded the same protections as wireline subscribers.[11]

62. 47 C.F.R. § 64.1200(d) further provides that "[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

> (1) Written policy. Persons or entitles making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.
>
> (2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.
>
> (3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period

[11] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003), *available at*, https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf (last visited Nov. 1, 2016).

> may not exceed thirty days from the date of such request . . . .
>
> (4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.
>
> (5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.
>
> (6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

63. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to wireless telephone subscribers such as Plaintiff and the Do Not Call Registry Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government. These consumers requested to not receive calls from Defendant, as set forth in 47 C.F.R. § 64.1200(d)(3).

64. Defendant also violated 47 C.F.R. § 64.1200(d) by failing to have a written policy of dealing with do not call requests, by failing to inform or train its personnel engaged in telemarketing regarding the existence and/or use of any do not call list, and by failing to internally record and honor do not call requests.

65. Defendant made more than one unsolicited telephone call to Plaintiff and other members of the Do Not Call Registry Class within a 12-month period without their prior express consent to receive such calls. Plaintiff and other members of the Do Not Call Registry Class

never provided any form of consent to receive telephone calls from Defendant, and/or Defendant does not have a current record of consent to place telemarketing calls to them.

66. Defendant violated 47 C.F.R. § 64.1200(d) by initiating calls for telemarketing purposes to residential and wireless telephone subscribers, such as Plaintiff and the Do Not Call Registry Class, without instituting procedures that comply with the regulatory minimum standards for maintaining a list of persons who request not to receive telemarketing calls from them.

67. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not Call Registry Class received more than one telephone call in a 12-month period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above. As a result of Defendant's conduct as alleged herein, Plaintiff and the Do Not Call Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are each entitled, *inter alia*, to receive up to $500 in damages for such violations of 47 C.F.R. § 64.1200.

68. To the extent Defendant's misconduct is determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages recoverable by the members of the Do Not Call Registry Class.

**FOURTH CAUSE OF ACTION**
**Telephone Consumer Protection Act**
**(Violation of 47 U.S.C. § 227, *et seq.*)**
**(On Behalf of Plaintiff and the Do Not Call Registry Stop Class)**

69. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

70. Defendant violated 47 C.F.R. §64.1200 by initiating calls for telemarketing purposes to cellular telephone subscribers such as Plaintiff and the Do Not Call Registry Stop Class who were registered on the National Do Not Call Registry and who specifically told

Defendant to stop calling them, and who received two or more additional calls within a 12-month period from Defendant at least thirty (30) days after informing Defendant to stop calling them. Defendant made these calls without instituting procedures that comply with the regulatory minimum standards for maintaining a list of persons who request not to receive telemarketing calls from them.

71. As a result of Defendant's unlawful conduct, Plaintiff and the Do Not Call Registry Stop Class suffered actual damages and, under section 47 U.S.C. § 227(c), Plaintiff and each member of the Do Not Call Registry Stop Class is each entitled to receive up to $500 in damages for each violation of 47 C.F.R. § 64.1200.

72. Should the Court determine that Defendant's conduct was willful and knowing, the Court may, pursuant to Section 227(b)(3), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Do Not Call Registry Stop Class.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff Debra Rafano, on behalf of herself and the classes, prays for the following relief:

A. An order certifying the Classes as defined above, appointing Plaintiff Debra Rafano as the representative of the Classes, and appointing her counsel as Class Counsel;

B. An award of actual monetary loss from such violations or the sum of five hundred dollars ($500.00) for each violation, whichever is greater all to be paid into a common fund for the benefit of the Plaintiff and the Class Members;

C. An order declaring that Defendant's actions, as set out above, violate the TCPA;

D. A declaratory judgment that Defendant's telephone calling equipment constitutes an automatic telephone dialing system under the TCPA;

E. An order requiring Defendant to disgorge any ill-gotten funds acquired as a result of its unlawful telephone calling practices;

F. An order requiring Defendant to identify any third-party involved in the pre-recorded calling as set out above, as well as the terms of any contract or compensation arrangement it has with such third parties;

G. An injunction requiring Defendant to cease all unsolicited pre-recorded calling activities, and otherwise protecting the interests of the Classes;

H. An injunction prohibiting Defendant from using, or contracting the use of, an automatic telephone dialing system without obtaining, and maintaining records of, call recipient's prior express written consent to receive calls made with such equipment;

I. An injunction prohibiting Defendant from contracting with any third-party for marketing purposes until it establishes and implements policies and procedures for ensuring the third-party's compliance with the TCPA;

J. An injunction prohibiting Defendant from conducting any future telemarketing activities until it has established an internal Do Not Call List as required by the TCPA;

K. An award of reasonable attorneys' fees and costs to be paid out of the common fund prayed for above; and

L. Such other and further relief that the Court deems reasonable and just.

**JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

Dated: November 1, 2016

**DEBRA RAFANO**, individually, and on behalf of all others similarly situated,

By: /s/ Steven L. Woodrow

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